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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,979	02/06/2001	David Jenkins	70496	3369

22242 7590 08/08/2002

FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

[REDACTED] EXAMINER

NICOLAS, FREDERICK C

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3754

DATE MAILED: 08/08/2002

*Amc  
9/18/02  
LHR*

Please find below and/or attached an Office communication concerning this application or proceeding.

APR 13 2002

FITCH, EVEN, TABIN  
RECEIVED

## Office Action Summary

Application No.	JENKINS ET AL.
Examiner	Art Unit
Frederick C. Nicolas	3754

*m*  
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 06 February 2001.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-44 are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other:

Art Unit: 3754

1. The filing date of this application has not been assigned due to the dismissal of the applicant's petition (see paper #10, 6/25/2002). Since, any subsequently filed drawings will constitute new matter, then the examiner now withholds any action on the merits in this application. However, a restriction requirement is followed.

***Election/Restrictions***

2. This application contains claims directed to the following patentably distinct species of the claimed invention:

I- Species A: Figures 1-2.

a- Subspecies A1: Figure 3A.

b- Subspecies A2: Figure 3B.

c- Subspecies A3: Figure 4A.

d- Subspecies A4: Figure 4B.

e- Subspecies A5: Figure 4C.

II- Species B: Figures 5A-5C, 6A-6C.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Further, if applicant elects Species A, then the applicant is required to elect one of the above noted subspecies. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday From 9:00 AM - 5:00 PM.

Art Unit: 3754

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry C. Yuen can be reached on (703)-308-1946. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-308-7766 for regular communications and (703)-308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0861.

FN

August 8, 2002

(F.W) 8/8/02

  
Henry C. Yuen  
Supervisory Patent Examiner  
Group 3700